

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SHARI LINDENBAUM, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CVS HEALTH CORPORATION, a
Delaware corporation,

Defendant.

Case No. 1:17-cv-1863-JG

Judge: James S. Gwin

**MOTION FOR JUDGMENT ON THE PLEADINGS,
OR IN THE ALTERNATIVE, TO STAY THE ACTION**

CVS HEALTH CORPORATION (“CVS Health”), by and through its counsel, pursuant to Fed. R. Civ. P. 12(b)(2) and (c), respectfully moves this Honorable Court for judgment on the pleadings as to Plaintiff Shari Lindenbaum’s Class Action Complaint or, in the alternative, to stay the action.

The Motion is brought on the grounds that Plaintiff fails to establish that this Court has personal jurisdiction over CVS Health. Additionally, the First and Second Causes of Action in Plaintiff’s Class Action Complaint fail for a variety of reasons. As a matter of law, prescription reminder telephone calls fall within the “emergency purposes” exception to the Telephone Consumer Protection Act under the plain language of 47 U.S.C. § 227(b)(1)(A). Moreover,

Plaintiff has not alleged she is a “residential telephone subscriber” as required to state a claim under 47 C.F.R. § 64.1200(c)(2) and (d), the alleged calls were not “telemarketing” or “telephone solicitations” as required under 47 C.F.R. § 64.1200(c)(2) and (d), and Plaintiff has not alleged that *she* registered her telephone number on the National Do-Not-Call Registry in accordance with 47 C.F.R. § 64.1200(c)(2).

In the event that the case is not dismissed or is only partially dismissed, CVS Health requests a stay of this action pursuant to the Court’s broad discretion to stay proceedings pending the resolution of independent proceedings elsewhere concerning the same or related issues. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *Michael v. Ghee*, 325 F. Supp. 2d 829, 831 (N.D. Ohio 2004). Specifically, CVS Health requests a stay of this action pending a ruling by the United States Court of Appeals in *ACA Int’l v. Federal Communications Comm’n*, No. 15-1211 (D.C. Cir. 2015).

This Motion is based upon Rule 12(b)(2) and (c) of the Federal Rules of Civil Procedure and the Court’s inherent authority to stay all proceedings, this Motion, the Memorandum of Points and Authorities in support thereof, the Declaration of Julie Juergens and exhibits, the Declaration of Thomas S. Moffatt, the Request for Judicial Notice, all papers and briefing submitted in support of this Motion, the papers and pleadings on file in this action, and on such further documentary evidence and oral argument as this Court may allow.

Counsel certifies that this case has not yet been assigned to a specific track and the memorandum in support of this Motion adheres to the twenty-page limit for unassigned cases set forth in Local Rule 7.1(f).

Dated: November 1, 2017

Respectfully submitted,

/s/ Julie L. Juergens

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Counsel for Defendant
CVS HEALTH CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

/s/ Julie Juergens

Julie Juergens